

PATENT
NEW Attorney Docket No. 11516.0001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Tyson Winarski, Esq.

Application No.: 09/662,968

Filed: September 15, 2000

For: AN INTERNET BASED SYSTEM FOR
MANAGING A NETWORK OF
ELECTRONIC ADVERTISING
BILLBOARDS THROUGH A WIRELESS
TELECOMMUNICATIONS SYSTEM

Group Art Unit: 3629

Examiner: Vig, N.

Confirmation No.: 3019

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

*Request to postpone
GRANTED.*

*James T. Moore
ACTING CHIEF JUDGE
BPA*

REQUEST TO RESET HEARING DATE

A Notice of Hearing was mailed by the U.S. Patent and Trademark Office (USPTO) on March 22, 2011, setting a hearing date of May 5, 2011, and providing a period of 21 days from the mailing date to confirm or waive the hearing. No response to this notice was filed. For the reasons provided below, counsel requests the hearing date be reset to one of the suggested dates later in May.

One of the inventors and sole assignee of this application, Jeff Myers, contacted Donald Dunner of Finnegan, Henderson, Farabow, Garrett & Dunner, LLP (Finnegan) and requested that he argue the appeals in two applications that were important to him. Mr. Dunner agreed and proceeded to obtain copies of both files from the attorneys that had been handling the prosecution previously. It was determined that this application

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was already under the jurisdiction of the Board by virtue of the Docketing Notice mailed March 4, 2010, and assigned Appeal No. 2010-004172. At the time of inspecting this file and reporting its status to our client, Jeff Myers, I informed both him and Mr. Dunner that I did not expect this appeal to be heard for at least two years based on the published information about the current inventory of undecided appeals at the Board.

The second and related application transferred to Finnegan was Application No. 09/860,196. It was abandoned at the time of transfer. A petition to revive that application, including a Request for Continued Examination (RCE) and amendment, was filed April 26, 2011.

The Notice of Hearing was mailed by the USPTO to Jeff Myers on March 22, 2011, setting a hearing date of May 5, 2011, and requiring a confirmation or waiver of the hearing within 21 days. This Notice was sent by Jeff Myers to Finnegan on April 1, 2011. Although the Notice was internally distributed to both Mr. Dunner and the undersigned, Mr. Dunner did not see the Notice and it was not entered into the docket system maintained by Finnegan. I assumed Mr. Dunner was handling the matter as he was specifically requested to argue the matter, and he was not focused on this appeal at least in part because I had advised him that hearing was unlikely until sometime in 2012. In any event, we failed to timely respond to the Notice to either confirm or waive the hearing.

At the time of filing the petition to revive in Application No. 09/860,196, and appointment of new powers of attorney in both applications, I noticed that the file did not contain any response to the Notice of Hearing. While Mr. Dunner's secretary saw the Notice, she assumed that I was working on this application as she knew I was working

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on Mr. Myers' other application and did not bring the Notice to his attention. I contacted Mr. Dunner to inquire whether he had responded to the Notice. At that time, we discovered that we had missed the deadline for responding to the Notice of Hearing. I immediately contacted Merrell Cashion at the Board of Patent Appeals and Interferences to seek his guidance on any procedures available to request a resetting of the hearing date. This request is filed pursuant to the guidance provided by Ms. Flackowitz.

We request that the hearing be reset to one of the following dates in May - May 17, 18, 19, 23, 24, and 31. If these dates are not available, every effort will be made to meet the next available date for the Board.

We apologize for missing the deadline for responding to the Notice and hope that the hearing can be reset without inconvenience to the panel assigned to this appeal.

We are not aware of any associated fees for this request, but any fee due may be charged to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: May 3, 2011

By: Charles E Van Horn
Charles E. Van Horn
Reg. No. 40,266
(202) 408-4000

FINNEGANFINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP
WWW.FINNEGAN.COM**FACSIMILE TRANSMITTAL**

To: Board of Patent Appeals and Interferences

Firm: USPTO

Fax No.: (571) 273-0299

Phone
No.:

[Phone No.]

Appeal No. 2010-004172

Application No. 09/662,968

Confirmation No. 3019

Subject: New Atty. Doc. 11516.0001

Date: May 3, 2011

From: Charles E. Van Horn

Phone No.: 202-408-4072

Fax # Verified clw
by:No. of Pages (incl. this 4
page)Confirmation Copy to Follow: No**Message:****CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R § 1.8**

I hereby certify that the attached paper, "REQUEST TO RESET HEARING DATE," is being transmitted by facsimile to the Board of Patent Appeals and Interferences, U.S. Patent and Trademark Office on the above-identified date.

Charles E. Van Horn
Reg. No. 40,266

CEVH/clw

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